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AND
BRIEFS

No. 16-460

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IN THE
Supreme Court of the United States

STEPHANIE C. ARTIS,
Petitioner,

v.

DISTRICT OF COLUMBIA,
Respondent.

On Writ of Certiorari to the
District of Columbia Court of Appeals

REPLY BRIEF OF PETITIONER

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28 U.S.C. §1367(d) provides that the "period of limitations" for a supplemental jurisdiction claim "shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." This Court should hold that "tolled" means "suspended." The evidence favoring this interpretation is overwhelming. Black's Law Dictionary defines "tolled" as "suspended." This Court's cases have repeatedly taken the same view. And in other statutes, "tolled" invariably means "suspended."

Respondent interprets "period of limitations ... shall be tolled" to mean "bar associated with the expiration of the period of limitations ... shall be removed"—such that §1367(d) merely removes the time bar during the statutorily-defined tolling period while the limitations clock keeps running. That interpretation rewrites the statute. Respondent's interpretation of "tolled" is inconsistent with ordinary usage, and makes nonsense out of numerous statutes that use "tolled." Meanwhile, grace period statutes *never* use "tolled" in the manner posited by Respondent.

Given the textual weaknesses in its position, Respondent leans on appeals to statutory purpose and legislative history, as well as an implausible constitutional avoidance argument. Those arguments cannot overcome the clear statutory text, and fail on their own terms.

I. Respondent's Interpretation Cannot Be Reconciled With the Statutory Text.

Respondent contends that under §1367(d), "tolled" means "removed." Thus, according to Respondent,

§1367(d) merely removes the limitations bar during the statutorily-defined tolling period, while the limitations period keeps running.

As a textual matter, Respondent's interpretation results in garbled English, renders a portion of the statute superfluous, and yields an absurdity.

Garbled English. Respondent overlooks that under §1367(d), it is the "*period of limitations*"—*i.e.*, the time period during which the plaintiff may sue—that is "tolled." Thus, if Respondent were correct that "tolled" means "removed," then §1367(d) would say that the "period of limitations ... shall be removed."

This is garbled English. A period of time cannot be "removed." Under Respondent's theory, it is the *bar associated with the expiration of the* period of limitations that is "removed"—not the period of limitations itself. Respondent offers no sound basis for rewriting the statute's operative phrase—"period of limitations"—as a different phrase—"bar associated with the expiration of the period of limitations."

By contrast, interpreting "tolled" as "suspended" does not require rewriting the statute, because it is natural to say that a time period is suspended. For instance, the phrases "the 5-minute rebuttal period was suspended while the microphone was fixed" or "the 2-minute penalty period was suspended while the play was stopped" are correct English, and mean that the clock stops.

Superfluity. Section 1367(d) enacts two tolling periods: (a) while "the claim is pending"; and (b) "for a period of 30 days after it is dismissed." Respondent's

interpretation renders the first tolling period superfluous. Under Respondent's view, the statute would work in the exact same way if it merely provided that the time bar was "removed" for 30 days after the claim was dismissed.

Respondent insists that the first tolling period is not superfluous because it "remove[s] any limitations bar that goes into effect during the enumerated period." D.C.Br.20. But it is unnecessary to say that the time bar is "removed" while the claim is pending in federal court. The time bar does not become relevant until after the case is dismissed and refiled in state court.

This superfluity becomes especially stark in situations where the federal court dismisses the state-law claims when there are more than 30 days left on the limitations clock. In those situations, under Respondent's view, §1367(d) would have *no* effect. Respondent argues that this outcome makes sense as a policy matter, D.C.Br.21, but it is nonsensical as a textual matter. Section 1367(d) says that the "period of limitations ... shall be tolled while the claim is pending" in federal court. Yet under Respondent's view, *nothing happens* to the "period of limitations"—the time period in which the plaintiff may sue is identical to what it would have been had no tolling ever occurred.

By contrast, Petitioner's interpretation harmonizes with the statutory text: The limitations period is suspended while the claim is pending in federal court, and for 30 days thereafter.

Absurdity. Respondent's interpretation would yield an absurdity. In Respondent's view, the limitations bar

would be removed during the 30-day grace period even if the state-law claim was *untimely* when the federal suit was brought. Suppose a federal court declines to exercise supplemental jurisdiction over a state-law claim to avoid deciding a difficult state-law statute of limitations question. Under Respondent's view, if the plaintiff refiled the state-law claim in state court within 30 days, the claim would automatically be timely, because the time bar would be "removed." By contrast, this would never happen under Petitioner's approach, because the clock would have already run out.

These textual anomalies are powerful evidence that Respondent's interpretation of §1367(d) is incorrect.

II. Respondent's Interpretation Is Inconsistent With the Ordinary Meaning of "Tolled."

As Petitioner's opening brief explains, dictionaries, cases, and other statutes confirm that Respondent's interpretation of §1367(d) is wrong. Pet.Br.17-26. Respondent's efforts to explain away these authorities are unsuccessful.

A. Dictionaries and Secondary Sources

For statutes of limitations, Black's Law Dictionary defines "toll" as "suspend or stop temporarily." Pet.Br.17. Respondent offers no persuasive reason to deviate from that definition.

Respondent points to a definition in Black's Law Dictionary—outside the statute of limitations context—equating "tolling" with "tak[ing] away." It cites other dictionaries offering similar definitions. D.C.Br.12-13. But these sources do not favor Respondent's position

over Petitioner's, because the time bar is "taken away" under *both* parties' interpretations—the parties agree that during the tolling period, the statute of limitations cannot expire. The parties disagree on a distinct question: whether the limitations period is suspended during the tolling period, as Petitioner contends, or keeps running during the tolling period, as Respondent contends. Respondent identifies no dictionary supporting its counterintuitive theory that a period of limitations can keep running while it is "tolled."

Respondent quotes a C.J.S. treatise for the proposition that tolling a statute of limitations "remove[s] its bar of the action." D.C.Br.13. The C.J.S. treatise lifts that phrase from *Smedley v. State Industrial Court*, 562 P.2d 847, 849 (Okla. 1977). *See* 54 C.J.S. *Limitations of Action* §133 (1987) (quoting *Smedley*). But *Smedley* also explains that the limitations period does *not* keep running during the tolling period: rather, the end of the tolling period triggers a fresh limitations period. 562 P.2d at 851. Moreover, the C.J.S. treatise later uses "toll" in a manner that plainly means "suspend." 54 C.J.S. *Limitations of Actions* §176 (equating "tolls the running of the statute of limitations" during a period with ensuring that this period is "not ... counted against that person in determining whether the statute of limitations" applies).

B. Case Law

Petitioner's brief identified several cases in which this Court has equated "tolled" with "suspended." Pet.Br.18-20. In response, Respondent claims to identify a conflicting line of cases interpreting "tolled"

consistent with its position. D.C.Br.14-19. Upon close inspection, Respondent's argument dissolves. This Court's cases do not support Respondent's idiosyncratic understanding of "tolled."

1. *The* Chardon *Case.*

Chardon v. Fumero Soto, 462 U.S. 650 (1983), on which Respondent relies (D.C.Br.14-15, 19), powerfully demonstrates why Respondent's proposed interpretation of "tolling" is incorrect.

Chardon addressed *American Pipe* tolling—the tolling of a plaintiff's claim "between the filing of an asserted class action and the denial of class certification." 462 U.S. at 654. The question presented was whether the "effect of the tolling" should be calculated under state or federal law. *Id.* at 651-52.

The Court observed:

> "Tolling effect" refers to the method of calculating the amount of time available to file suit after tolling has ended. The statute of limitations might merely be suspended; if so, the plaintiff must file within the amount of time left in the limitations period. If the limitations period is renewed, then the plaintiff has the benefit of a new period as long as the original. It is also possible to establish a fixed period such as six months or one year during which the plaintiff may file suit, without regard to the length of the original limitations period or the amount of time left when tolling began.

Id. at 652 n.1. The Court noted that *American Pipe* had applied the "common-law rule of suspension," *id.* at 655, also embodied in the Clayton Act: the clock stops during the tolling period. *Id.* The Court held, however, that for state-law claims, Puerto Rico could apply its rule that "the statute of limitations begins to run anew when tolling ceases." *Id.*

Thus, *Chardon* identified two types of "tolling effects": (1) the clock stops during the tolling period, and then resumes at the end; (2) the plaintiff gets a fixed period after tolling ends. *Id.* at 652 n.1.

Under Respondent's interpretation, however, the clock *keeps going* during the tolling period. That "tolling effect" conforms to *neither* of the "tolling effects" recognized by *Chardon*—and on *Chardon*'s facts, that "tolling effect" would make no sense. *Chardon* defined the tolling period as the time "between the filing of an asserted class action and the denial of class certification." *Id.* at 654. *American Pipe* tolling's purpose is to ensure that a plaintiff can file a new lawsuit *after* the tolling period. Thus, if "tolled" simply meant "removed the limitations bar during the tolling period while the clock continues to run," *American Pipe* tolling would be useless.

By contrast, Petitioner's approach hews perfectly to *Chardon*. In *Chardon*, the Court noted that suspension is the "common-law rule" applied in *American Pipe*, *id.* at 655, but that states were free to offer more generous limitations periods. Section 1367(d) works in the same

way. It embodies the common-law suspension rule,[1] but if, as in *Chardon*, a state elects to enact a more generous tolling rule, §1367(d) authorizes the state to do so.

2. *Other cases.*

Like *Chardon*, the other cases Respondent cites do not support Respondent's position.

Hardin v. Straub, 490 U.S. 536 (1989), on which Respondent relies, offers little assistance. In *Hardin*, this Court held that in §1983 suits, federal courts should give effect to state tolling statutes. The state statute there was an unambiguous "grace period" statute—it did not use the word "toll," but instead gave a plaintiff "1 year after the disability is removed" to bring suit. *Id.* at 540 (quoting Mich. Comp. Laws Ann. §600.5851(1)). The Court held that "[a] State's decision to toll the statute of limitations during the inmate's disability does not frustrate §1983's compensation goal." *Id.* at 543. This statement contradicts Respondent's interpretation of "tolling"—it uses "toll" to mean giving the plaintiff extra time after the tolling period, whereas in Respondent's view, §1367(d) has no effect after the tolling period.

Respondent cites a statement in the Court's summary of the lower court's holding characterizing the

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[1] Petitioner does not contend that §1367(d) embodies the even more generous approach described in *Chardon*, in which the clock resets to zero after the tolling period. No court has interpreted §1367(d) this way, and in context this interpretation would not make sense. If the clock reset to zero *after* the 30-day period, the 30-day period—intended to protect litigants who filed suit late in the limitations period—would be unnecessary.

state statute as "suspend[ing] limitations periods for persons under a legal disability until one year after the disability has been removed." *Id.* at 537. This passing dictum, which neither quotes the relevant statute nor uses the word "toll," sheds little light on the meaning of §1367(d). It is outweighed by the myriad cases that characterize tolling as stopping the clock, one of which, in dicta, discusses §1367(d) itself. Pet.Br.18-20.

Strikingly, this dictum from *Hardin* is Respondent's best authority. No other case cited by Respondent even arguably uses "toll" or "suspend" as Respondent proposes. Respondent instead recites a series of cases using "toll" in the context of schemes that start a fresh limitations clock at the tolling period's conclusion. D.C.Br.15-16. In none of these cases does the underlying statute or rule use "toll." And in none does the Court suggest that the clock continues running during the tolling period.

Cases involving equitable tolling lend further support to Petitioner's interpretation. As Petitioner explained, this Court has held that "[p]rinciples of equitable tolling usually dictate" the suspension approach. Pet.Br.18 (citing *United States v. Ibarra*, 502 U.S. 1, 4 n.2 (1991) (per curiam)). One would expect "tolling" in §1367(d) to be consistent with what tolling "usually" means.

Respondent cites lower-court cases stating that equitable tolling provides only a "reasonable" extension after the tolling period concludes. D.C.Br.33. Even assuming this approach—which this Court has never endorsed—is correct, it is still inconsistent with

Respondent's interpretation, under which the plaintiff gets *no* time after the tolling period.

C. Other Statutes.

Other statutes provide remarkably powerful evidence in support of Petitioner's interpretation. A wide array of "tolling" statutes are consistent with Petitioner's position, while *none* support Respondent.

1. *Federal Statutes.*

Petitioner's opening brief quoted five federal statutes, and cited many more, under which Respondent's interpretation of "toll" is clearly wrong. Pet.Br.22-23 & n.5.

For instance, 28 U.S.C. §1332(d)(11)(D) permits removal of "mass action[s]" to federal court and states that the "limitations periods" on claims asserted in mass actions "shall be deemed tolled during the period that the action is pending in Federal court." Pet.Br.20-21. Respondent insists that this statute is compatible with its understanding of "tolling" (D.C.Br.35) but that simply is not so. The point of this statute is to ensure that the plaintiff can bring suit *after* the tolling period. Yet under Respondent's view, the statute has no effect after the tolling period. Rather, the statute's sole effect would be to prevent the statute of limitations from barring a claim during the precise period that a plaintiff will *not* bring suit: while the claim is already pending in a federal court mass action. This interpretation would render the statute meaningless.

Petitioner also cited 21 U.S.C. §1604, which provides that an "applicable statute of limitations shall toll during

the period" while an administrative claim is being exhausted. Pet.Br.21. Likewise, 42 U.S.C. §233(p)(3)(A)(ii) provides that a "time limit for filing a claim ... shall be tolled during the pendency of" an administrative claim. Pet.Br.21. Under these statutes, Respondent's interpretation of "tolled" is also clearly wrong. These statutes ensure that the claimant can file suit *after* the tolling period expires—*i.e.*, after the administrative claim is exhausted. They would be meaningless if the limitations bar were removed during the tolling period—*while* the administrative claim is pending—and then resurrected thereafter.

These statutes powerfully support Petitioner's position. In each of them, as in §1367(d), the limitations period is "tolled" while a claim is pending in another forum—and in each, it is obvious that the clock stops. Section 1367(d) provides a longer tolling period than those statutes—the limitations period is tolled not only while a claim is pending in federal court, but also for an additional 30 days. But the *length* of the tolling period does not affect the *meaning* of "tolling." The fact that Congress gave an extra 30 days of tolling in §1367(d) does not justify contorting the meaning of tolling from "stops running" into "continues running while the statute of limitations is unenforceable."

Another statute Petitioner quotes, 5 U.S.C. §552(a), gives the government 20 days to respond to certain FOIA requests, but provides that the agency may "toll the 20-day period while it is awaiting" information. Pet.Br.22. In this statute, "toll" obviously means "suspend," because the statute's goal is to ensure that time remains on the clock *after* the information is

received. The other statutes cited by Petitioner follow the same pattern. *Id.* at 22 n.5; *see, e.g.*, 8 U.S.C. §1186(g) ("90-day period ... shall be tolled during any period of time in which [spouse is serving abroad in military]"); 18 U.S.C. §2712(e) (stay of proceedings "shall toll ... limitations periods"); 49 U.S.C. §41714(i)(3) ("60-day period tolled during timely request for more information"). These statutes are nonsensical under Respondent's interpretation; they make sense only if the limitations period resumes running *after* tolling concludes.[2]

Yet another statute quoted by Petitioner is 46 U.S.C. §53911(d), entitled "Tolling of limitations period"—virtually identical to the phrase in §1367(d). It states that if a claim for war-related vessel damage is submitted to the Secretary of Transportation, "the running of the limitations period for bringing a civil action is suspended until the Secretary denies the claim, and for 60 days thereafter." Pet.Br.21. This statute, then, clarifies that "tolling of limitations period" means "the running of the limitations period ... is suspended." And it uses "tolled" to mean "suspended" in a scheme closely similar to §1367(d)'s scheme—the tolling period

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[2] Respondent asserts that some of these statutes "do not involve statutes of limitations," citing two examples: 15 U.S.C. §6603(h)(5) and §6614(c)(3)(C). D.C.Br.34 n.15. On §6614(c)(3)(C), Respondent is wrong: it is entitled "Period of limitations tolled." Section 6603(h)(5) is entitled "Enforcement of obligations merely tolled"; it clarifies that "tolled" means "delay[ed]"—just as, under the suspension approach, tolling delays the limitation period's expiration. Even if §6603(h)(5) is ambiguous, every other cited statute unambiguously "tolls" a time period.

is suspended not only during the claim's pendency in the administrative forum, but also for 60 days thereafter.

Respondent derides these statutes as "cherry-picked." D.C.Br.34-35. But Respondent offers *zero* counter-examples of *any* federal statutes in which "tolled" could even arguably carry Respondent's proposed interpretation. And none of the "grace period" statutes identified by Petitioner use the term "tolled." Pet.Br.24-25. Given that Congress apparently *never* uses "tolled" in the manner Respondent proposes, the Court should not adopt Respondent's idiosyncratic interpretation of §1367(d).

2. *State Statutes.*

State statutes provide further evidence that Respondent's interpretation of "tolled" is wrong.

Respondent claims that §1367(d) was modeled after state "extender" statutes, which provide grace periods to refile claims in an appropriate court. D.C.Br.22-25. It cites an amicus brief appendix that lists these statutes. D.C.Br.22 (citing State Legislatures Am. Br., App.).

That appendix quotes the statutes of 40 states, 34 of which are identified as statutes providing a fixed grace period. State Legislatures Am. Br., App. i-iii. *Zero* use "toll." *All* of them use the type of unquestionable grace period language that Congress eschewed in §1367(d).

The statutes of two other states—Michigan and Wisconsin—do use "toll," and are characterized by the amicus brief as having an "uncertain tolling effect." *Id.* at ii-iii, 10a-11a, 24a-25a. Contra the amicus brief,

however, it is *certain* from these statutes that Respondent's interpretation of "tolled" is wrong.

Wisconsin's statute provides, *inter alia*, that a statute of limitations "is tolled from the period of commencement of the action in a non-Wisconsin forum until the time of its final disposition in that forum." *Id.* at 25a. Michigan's statute provides, *inter alia*, that a statute of limitations "is tolled" during a "notice period under section 2912b." *Id.* at 11a. That notice period, in turn, is a period during which the plaintiff *cannot* bring suit. Mich. Comp. Laws §600.2912b(1).[3]

These statutes are intended to ensure that the plaintiff can bring suit *after* the tolling period. These statutes are therefore irreconcilable with Respondent's interpretation, which merely lifts the limitations bar during the tolling period while the clock keeps running.

Thus, state statutes are consistent with federal statutes. Grace period statutes *never* state that the statute of limitations is "tolled" during the grace period. If Congress had wanted to enact a grace period statute, it would not have used "tolled."

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[3] One other statute quoted by the amicus uses "tolled." Virginia's extender statute generally applies the suspension approach, but for certain suits, it provides that statutes of limitations are "tolled by the commencement of" the suit, and then provides an express six-month grace period after dismissal. State Legislatures Am. Br., App. 23a. This statute does not support Respondent: it does not suggest the statute of limitations is tolled *during* the six-month period.

III. Respondent Identifies No Reason To Deviate From the Text.

Respondent advances several arguments for deviating from the ordinary meaning of "tolled." Each fails.

A. Purpose

Respondent insists that Petitioner's interpretation would result in tolling periods that are excessively long, contrary to the statute's perceived purpose. D.C.Br.20-22, 25-28. That argument lacks merit.

This Court has explained that suspension is the "common-law" method of tolling, *Chardon*, 462 U.S. at 655, which is "usually" used. *Ibarra*, 502 U.S. at 4 n.2. As catalogued above, statutes employing this approach are ubiquitous in the U.S. Code. *Supra* at 10-13.

And for good reason. The suspension approach makes sense. "Statutes of limitations are designed to encourage plaintiffs 'to pursue diligent prosecution of known claims.'" *Cal. Pub. Emps. Ret. Sys. v. ANZ Sec., Inc.*, 137 S. Ct. 2042, 2049 (2017) (quoting *CTS Corp. v. Waldburger*, 134 S. Ct. 2175, 2183 (2014)). Thus, statutes of limitations define a period of dormancy that extinguishes a claim; they ensure that a plaintiff who sleeps on her rights for a long enough period, loses her rights. The suspension approach treats plaintiffs fairly by excluding, from the calculation of that period, the time during which the plaintiff is *not* sleeping on her rights, but is instead actively litigating in federal court. And it rewards plaintiffs who file suit diligently by giving them more time to refile after dismissal—while causing little prejudice to defendants, who cannot claim

surprise from claims that were already filed in federal court. Pet.Br.26-29.

Respondent advances policy arguments favoring a shorter tolling period. D.C.Br.25-28. But the statutory text makes clear that Congress rejected those policy arguments in favor of the traditional suspension approach. Respondent's policy arguments do not justify deviating from this text.

History also bolsters Petitioner's interpretation. For over a century, federal statutes have stopped the clock on state-law limitations periods. In *Jinks v. Richland County*, the Court observed that it had "upheld as constitutional a federal statute that tolled limitations periods for state-law civil and criminal cases for the time during which actions could not be prosecuted because of the Civil War." 538 U.S. 456, 462 (2003) (citing *Stewart v. Kahn*, 78 U.S. (11 Wall.) 493 (1871)). That statute "tolled limitations periods," *id.*, by stopping the clock. *Stewart*, 78 U.S. (11 Wall.) at 504 (quoting statute providing that this time period "shall not be deemed or taken as any part of the time limited by law for the commencement of such action"). Likewise, in 1940, Congress enacted legislation stopping state-law limitations clocks while a party was in military service. *Jinks*, 538 U.S. at 461 n.1. Congress reasonably made the same choice in §1367(d).

Unlike in those prior statutes, in §1367(d), Congress decided to toll limitations periods for an extra 30 days after federal dismissal. Doing so makes sense: it protects litigants who file their federal suits at the very end of the limitations period by giving them extra time after federal dismissal to refile their state-law claims.

Pet.Br.28. Similar statutes appear elsewhere in the U.S. Code. *See supra* at 12-13 (discussing 46 U.S.C. §53911(d)); 28 U.S.C. §2263(b) (providing that 180-day clock is tolled while claim is pending in other forum, and for 30 extra days if certain conditions are met).

Respondent deems absurd Congress's choice to give *all* litigants an extra 30 days, rather than only those litigants who file suit near the limitations period's end. D.C.Br.21-22. Respondent apparently believes Congress should have enacted some kind of sliding-scale scheme, where litigants who file at the beginning of the limitations period get only stop-clock tolling and litigants who file near the end get stop-clock tolling plus additional time. Although Congress could have enacted such a scheme, Congress evidently concluded that giving everyone the same tolling period—the pendency of the federal suit, plus 30 days—was simpler and more administrable. This was a reasonable policy choice, and Respondent offers no basis for warping the statutory text to avoid implementing that choice.[4]

B. State Law Backdrop

Respondent argues that §1367(d) was modeled after state "grace period" statutes. D.C.Br.22-25. As explained above, those statutes contradict Respondent's

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[4] Respondent asserts that a 30-day period "tracks the period of time that would follow a garden-variety remand of removed claims." D.C.Br.27 n.10. If Respondent is referring to 28 U.S.C. §1447(c), which requires a request for remand to state court to be made within 30 days of removal, that statute has no evident relevance to §1367(d).

proposed interpretation. *None of them* uses "toll" in the way suggested by Respondent. *Supra* at 13-14.

Respondent maintains that Petitioner's approach would override state tolling statutes providing for a grace period longer than 30 days. It is not clear how many of these statutes would apply, as a state-law matter, to claims dismissed under §1367(d). *See, e.g., Rector v. DACCO, Inc.*, No. M2005-00294-COA-R9-CV, 2006 WL 1749525, at *4 (Tenn. Ct. App. June 26, 2006) (refusing to apply Tennessee extender statute to such claims). But if they did apply, they would still have effect under the suspension approach if they offered a longer tolling period than the federal statute. For instance, Respondent cites a Texas statute providing a 60-day grace period following a claim's dismissal. If a plaintiff filed a Texas law claim in federal court with 5 days left in the limitations period, and it was dismissed under §1367(d), the Texas law would apply because it would give the plaintiff 60 more days, whereas the federal statute would provide only 35 more days.

Respondent questions this result because the Texas statute is not a "tolling" statute under Petitioner's view. D.C.Br.19 n.4. But in the above scenario, the Texas statute would yield the mathematical equivalent of a tolling period of the pendency of the federal suit, plus 55 days—exceeding the federal tolling period. In Petitioner's view, it would thus provide a "longer tolling period" under §1367(d). In any event, this question is not presented here.

C. Legislative History

Respondent's citation of legislative history is unhelpful in interpreting §1367(d).

Respondent contends that in §1367, Congress intended to implement the 1969 ALI Study's recommendation for a 30-day grace period. It is undisputed that Congress neither mentioned the ALI study in the legislative history of §1367(d), nor adopted the ALI's proposed language unambiguously providing for a 30-day grace period. Pet.Br.29-30. Undeterred, Respondent points to a "ALI Reporter's note," which includes language somewhat similar to §1367(d). D.C.Br.31. The ALI Study states that Reporter's notes reflect "the Reporters' work alone," rather than the view of the ALI majority. ALI Study, p. x. Nevertheless, Respondent theorizes that §1367(d) reflects Congress's effort to enact the ALI Reporter's note, which in turn signals Congress's agreement with the ALI's proposal. D.C.Br.31.

Questions abound. If Congress wanted to follow the ALI's recommendation, why would it: (a) not cite the ALI report in the legislative history of §1367(d) while citing it in the legislative history of other provisions, (b) also not adopt the ALI's proposed statute, which plainly enacts a grace period, and (c) not even adopt the ALI Reporter's language, but instead rewrite that language? Rather than follow this unusually unhelpful legislative history, the Court should follow the statute as written.[5]

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[5] The document prepared by the ALI in 2004 (D.C.Br.32) is even less helpful in interpreting §1367(d). "Post-enactment legislative history ... is not a legitimate tool of statutory interpretation,"

D. Clear-Statement Rule.

Respondent maintains that the suspension approach to §1367(d) infringes on state sovereignty, and therefore should apply only if Congress made a "clear statement." D.C.Br.38-46. Section 1367(d) is clear enough to overcome any clear-statement rule; nevertheless, no clear-statement rule applies.

First, in the context of §1367(d), this Court has held that the clear-statement canon applies only in cases of constitutional doubt. In *Raygor v. Regents of University of Minnesota*, 534 U.S. 533 (2002), the Court held that §1367(d) did not apply to state-law claims against nonconsenting state governments that federal courts dismissed on Eleventh Amendment grounds. *Id.* at 542. The Court applied a clear-statement rule, because a contrary interpretation would have raised the serious question of whether state sovereign immunity had been unconstitutionally abrogated. *Id.* at 543. Subsequently, in *Jinks*, the Court considered whether §1367(d) applied to suits against state political subdivisions. The Court declined to apply a clear-statement rule, distinguishing *Raygor* on the ground that applying §1367(d) to claims against state subdivisions yielded "no ... constitutional doubt." 538 U.S. at 466. Here, Respondent does assert a constitutional avoidance argument; but if the Court rejects that argument, as Petitioner advocates below, then *Jinks* holds that the clear-statement rule does not otherwise apply.

Bruesewitz v. Wyeth LLC, 562 U.S. 223, 242 (2011). Post-enactment ALI reports are doubly illegitimate.

Even if a clear-statement rule applied outside the constitutional avoidance context, it would not apply here for two reasons. First, Respondent's concerns that the suspension approach infringes on state sovereignty are exaggerated. Under the suspension approach, §1367(d) regulates the effect of a statute of limitations on a claim properly brought in federal court, while that claim is pending in federal court. This effect is readily understood as regulating federal court litigation and hardly constitutes the type of gratuitous intrusion into state law that warrants a clear-statement rule. Indeed, the suspension approach to §1367(d) seems a lesser intrusion on state sovereignty than the application of §1367(d) in *Jinks*, which exposed states' own subdivisions to lawsuits that would otherwise be time-barred under state law. Yet, the Court held there that no clear-statement rule applied.

Second, unlike the cases Respondent cites (D.C.Br.41), this is not a case where one interpretation of a statute would alter the constitutional balance of power and the other would not. For instance, this case is not comparable to *Raygor*, where the Court was faced with dueling interpretations of §1367(d), one of which would have abrogated state sovereign immunity and one of which would have left claims against state governments unaffected. To the contrary, under *either* party's interpretation, §1367(d) imposes a tolling period defined by federal law. Indeed, on its face, the question presented has nothing to do with state law; it simply asks whether an unquestionably federal time period is longer or shorter. Accordingly, the Court has no basis for applying a clear-statement rule.

Respondent nevertheless argues for a clear-statement rule under the following theory: Section 1367(d) imposes a baseline federal tolling period, with a savings clause stating that the tolling period can be lengthened—but not shortened—by state law. If the baseline federal tolling period is shorter, then statistically speaking, the savings clause will be triggered more often. Therefore, the Court should presume that Congress wanted the savings clause to be triggered frequently, and any ambiguity over the length of the federal tolling period should be resolved in favor of making it shorter. D.C.Br.38-46.

That approach conflicts with this Court's cases. This Court has explained that when a statute "contains an express pre-emption clause," the Court "do[es] not invoke any presumption against pre-emption but instead focus[es] on the plain wording of the clause." *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 S. Ct. 1938, 1946 (2016) (internal quotation marks omitted); *accord Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936, 946 (2016) (declining to apply presumption against preemption when statute expressly "contemplated the pre-emption" of state law).

In §1367(d), Congress enacted an express federal tolling statute that should be construed according to its terms. Although a longer federal time period will have the ancillary effect of triggering the state savings clause less frequently, that is an insufficient basis for imposing an artificial clear-statement requirement.

E. Constitutional Avoidance

Contrary to Respondent's contention, adopting the suspension approach to §1367(d) would pose no constitutional concern.

In *Jinks*, this Court unanimously upheld the constitutionality of §1367(d). It concluded that Congress possesses the enumerated power "[t]o constitute Tribunals inferior to the supreme Court," and that §1367(d)'s tolling rule was "necessary and proper" for executing that power. 538 U.S. at 462 (quoting U.S. Const., Art.I, § 8, cl. 9); *see* Pet. Br. 32-33. Respondent nonetheless contends that because the grace-period approach gives plaintiffs sufficient time to refile their state-law claims in state court, the suspension approach exceeds Congress's powers. D.C.Br.46-49.

That argument lacks merit. In *Jinks*, this Court noted that the Necessary and Proper Clause does not demand "that an Act of Congress be 'absolutely necessary' to the exercise of an enumerated power"; it need only be "conducive to the due administration of justice in federal court, and ... plainly adapted to that end." 538 U.S. at 462 (quotation marks omitted). This Court subsequently explained that the "Necessary and Proper Clause grants Congress broad authority to enact federal legislation"; a statute is constitutional if it "constitutes a means that is rationally related to the implementation of a constitutionally enumerated power." *United States v. Comstock*, 560 U.S. 126, 134 (2010).

Congress's selection of the suspension approach is "rationally related to the implementation of" Congress'

power to constitute federal courts. The suspension approach treats federal-court plaintiffs fairly, by ensuring that the statute of limitations—the period of dormancy necessary to extinguish a lawsuit—excludes the time that the claim is *not* dormant, but is instead being litigated in federal court. It treats federal-court plaintiffs equally by giving them all the same tolling period. And it encourages diligent federal-court filings by giving plaintiffs who filed suit early in the limitations period extra time post-dismissal. The statute therefore falls within Congress's "broad authority." *Id.* at 133.

The same result would apply under the approach of all Members of the Court in *Comstock*. In *Comstock*, the Court's Members debated the scope of Congress's powers under the Necessary and Proper Clause, but even the dissent agreed that Congress has "a certain degree of latitude in selecting the means for 'carrying into Execution' an end that is 'legitimate.'" *Id.* at 167 (Thomas, J., dissenting). Here, Petitioner's argument is modest and does not require testing the outer boundaries of the Necessary and Proper Clause. Petitioner merely argues that if Congress has the power to extend state-law statutes of limitations and has some latitude in implementing that power, the suspension approach—the traditional, common-law approach toward tolling—does not exceed the boundaries of that latitude. Holding that §1367(d) is unconstitutional as written because the limitations period could have been shorter would reflect an unprecedented degree of micromanagement of congressional enactments.

Respondent advocates for a kind of least-restrictive-means approach to the Necessary and Proper Clause. It

maintains that if Congress *could* have enacted a shorter extension period, it constitutionally *must* do so. This Court has never adopted this approach, which would conflict with cases dating back to *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819) and would radically alter the balance of power between states and the federal government.

Respondent's argument is also ahistorical. As noted above, after the Civil War, Congress tolled state statutes of limitations by means of a stop-clock statute. *Supra* at 16. In *Stewart v. Kahn*, this Court upheld that legislation under the Necessary and Proper Clause. 78 U.S. (11 Wall.) at 506. The Court gave no indication that Congress's decision to enact a suspension statute, rather than a grace period statute, posed any constitutional concern.

Contrary to Respondent's concerns, the suspension approach would not aggrandize congressional power. Section 1367(d) stops the limitations clock on state-law claims filed *in federal court* for the period of their pendency *in federal court* (plus 30 more days). This fits Congress's authority over the federal courts like a key in lock. Indeed, given that a federal court has the unquestionable power to dismiss these claims with prejudice, stay these claims, or enter judgment on these claims, allowing the court to extend the limitations period on these claims is not some grave blow to state sovereignty. It is not remotely comparable to a statute requiring all Americans to buy health insurance, as Respondent implies. D.C.Br.49.

Finally, it bears noting that Respondent makes a constitutional *avoidance* argument; only its amici

actually argue the statute is unconstitutional. If the Court has constitutional doubt, it should interpret the statute as written and reserve the constitutional question for a case where it is properly preserved.

CONCLUSION

The judgment below should be reversed and remanded.

Respectfully submitted,

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